[C-2] (July 29, 1969)

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT, ST. CLAIR COUNTY, ILLINOIS

JOHN SCHILB, individually and in a representative capacity for and on behalf of each member of a class of persons who have since August 14, 1963 been, or who have hereafter been; (a) named in a criminal proceeding in the Circuit Court of St. Clair County, Illinois, or any Department or Division thereof; (b) required to post a deposit of bail security and was acquitted by the trial court, and; (c) who was required to pay as bail bond costs, 10% of the bail security, said person had deposited, under an act in relation to the deposit of bail security approved August 14, 1963,

Plaintiff,

vs.

VINCENT P. KUEBEL, as Clerk of Circuit Court of St. Clair County; MAURICE F. JOSEPH, as County Treasurer of St. Clair County; and COUNTY OF ST. CLAIR, ILLINOIS,

Defendants.

CIV-69-1455

COMPLAINT IN CHANCERY—CLASS ACTION

John Schilb, individually and in a representative capacity for and on behalf of each member of a class of persons who have since August 14, 1963 been, or who have hereafter been; (a) named in a criminal proceeding in the Circuit Court of St. Clair County, Illinois, or any Department or Division thereof; (b) required to post a deposit of bail security and was acquitted by the trial court, and; (c) who was required to pay as bail bond costs, 10% of the bail security, said person had deposited, under an act in relation to the deposit of bail security approved August 14, 1963, Laws 1963, p. 2836, Section 110-7, and complains of Defendants, Vincent P. Kuebel, as Clerk of the Circuit Court of St. Clair County, Illinois, Maurice F. Joseph, as Treasurer of St. Clair County, Illinois, and the County of St. Clair, Illinois, and alleges as follows:

1. Defendant, Vincent P. Kuebel, is now and was at all times material hereto the duly appointed, qualified and acting Clerk of the Circuit Court of St. Clair County, Illinois.

2. Defendant, Maurice F. Joseph, is now and was at all times material hereto the duly elected, qualified and acting County Treasurer of St. Clair County, Illinois.
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3. Defendant, St. Clair County, Illinois is and was at all times material hereto a duly existing corporate and politic body in Illinois.

4. Plaintiff, John Schilb, is a citizen and resident of the City of Belleville, St. Clair County, Illinois.

5. On to-wit: August 14, 1963, there was approved a certain act of the General Assembly of the State of Illinois as follows:

(a) The person for whom bail has been set shall execute the bail bond and deposit with the clerk of the court before which the proceeding is pending a sum of money equal to 10% of the bail.

(b) Upon depositing this sum the person shall be released from custody subject to the conditions of the bail bond.

(c) Once bail has been given and a charge is pending or is thereafter filed in or transferred to a court of competent jurisdiction the latter court shall continue the original bail in that court subject to the provisions of Section 110-6 of this Code.

(d) After conviction the court may order that the original bail stand as bail pending appeal or deny, increase or reduce bail.

(e) After the entry of an order by the trial court allowing or denying bail pending appeal either party may apply to the reviewing court having jurisdiction or to a justice thereof sitting in vacation for an order increasing or decreasing the amount of bail or allowing or denying bail pending appeal.

(f) When the conditions of the bail bond have been performed and the accused has been discharged from all obligations in the cause the clerk of the court shall return to the accused 90% of the sum which had been deposited and shall retain as bail bond costs 10% of the amount deposited.

(g) If the accused does not comply with the conditions of the bail bond the court having jurisdiction shall enter an order declaring the bail to be forfeited. Notice of such order of forfeiture shall be mailed forthwith by the court to the accused at his last known address. If the

accused does not appear and surrender to the court having jurisdiction within 30 days from the date of the forfeiture or within such period satisfy the court that appearance and surrender by the accused is impossible and without his fault the court shall enter judgment for the State against the accused for the amount of the bail and costs of the court proceedings. The deposit made in accordance with subsection (a) shall be applied to the payment of costs. If any amount of such deposit remains after the payment of costs it shall be applied to payment of the judgment and transferred to the treasury of the county wherein the bond was taken. The balance of the judgment may be enforced and collected in the same manner as a judgment entered in a civil action.

(h) After a judgment for a fine and court costs or either is entered in the prosecution of a cause in which a deposit had been made in accordance with subsection (a) the balance of such deposit, after deduction of bail bond costs, shall be applied to the payment of the judgment.

6. Thereafter the defendant, Vincent P. Kuebel, or his predecessors, as Clerk of the Circuit Court of St. Clair County, Illinois, and, Maurice F. Joseph, or his predecessors, as County Treasurer of St. Clair County, Illinois, acting under the provisions of the above mentioned acts collected from the plaintiff and a number of other persons, all of whom were defendants in criminal actions, [C-4]

and all of whom were acquitted by trial courts of their respective charges a sum equal to 10% of their respective deposits of bail security.

7. That on to-wit, the 16th day of January, 1969 the plaintiff was arrested and charged with leaving the scene

of an accident, under Case No. A4229, and that subsequent thereto, the plaintiff posted a bail security in the amount of $50.00 cash and on the same date was charged with obstructing traffic in Case No. A4533 and posted a bail security in the amount of $25.00 cash.

8. That on June 6, 1969, after a trial, the plaintiff was acquitted of the charge of leaving the scene and found guilty of obstructing traffic and was thereafter charged by and paid $7.50 to defendant, Vincent P. Kuebel, as Clerk of the Circuit Court of St. Clair County, Illinois, under sub-paragraph (f) of Chapter 38, Section 110-7 "Deposit of Bail Security." Plaintiff states that there are large numbers of defendants to proceedings brought against them in the Circuit Court of St. Clair County, Illinois, similarly situated, but that the names and residences of such persons are unknown to the plaintiff. Plaintiff states that each of said persons is a member of a class of persons who have since August 14, 1963, been or who may or have been, (a) named as a defendant in a criminal action in the Circuit Court of St. Clair County, (b) required to file a deposit of bail security, and (c) required after trial, dismissal or acquittal to pay a sum equal to 10% of the bail security deposited.

9. Each member of the said class has a common interest in resisting the exaction of unconstitutional and improper charges made by the defendant, Vincent P. Kuebel, or his predecessors, as Clerk of the Circuit Court of St. Clair County, Illinois, under the guise of an act in relationship to the deposit of bail security, as well as in any fund which may arise by virtue of any decree of this court, which may be entered in connection with an unconstitutional collection of bail bond, costs.

10. Each member of said class has a common interest in the interpretation of the aforesaid act. Plaintiff states that as to the plaintiff and each of the members of the abovementioned class of persons, there is a common ques-
[C-5]
tion of law and fact and that a decision for the plaintiff in this case will settle the law as to each of the members of said class.

11. It is impractical if not impossible for all of said members of said class to be joined as parties to this suit. Therefore, in order to avoid a multiplicity of suits, the plaintiff brings this action in a representative capacity for and on behalf of each of the members of the abovementioned class, similarly situated, who will bear a proportionate share of the expenses of this litigation. Each of the members of this class would be entitled to relief identical to the relief which may be offered to the plaintiff in the event that the court awards relief to the plaintiff.

12. The action of the defendant, Vincent P. Kuebel, or his predecessors, as Clerk of the Circuit Court of St. Clair County, Illinois, in requiring defendants in criminal proceedings to pay a 10% bail bond cost is unconstitutional and deprives the said defendants of their property without due process of law, and in violation of the equal protection of the laws, contrary to the 14th Amendment to the Constitution of the United States, and Article 2, Section 2 of the Constitution of the State of Illinois.

13. The action of the defendant, Vincent P. Kubel, or his predecessors, as Clerk of the Circuit Court of St. Clair County, Illinois, in requiring defendants in criminal proceedings to pay a 10% bail bond cost, is illegal,

arbitrary, capricious and in violation of the express terms of the Statutes and violates Article 2, Section 19 of the Constitution of the State of Illinois, which provides:

> "Every person ought to find a certain remedy in the laws for all injuries and wrongs which he may receive in his person, property or reputation: he ought to obtain, by law, right and justice freely, and without being obliged to purchase it, completely and without denial, promptly, and without delay."

14. Plaintiff states that each member of the class upon whose behalf this action is maintained, has been or will be required to pay a 10% bail bond cost.

15. An actual controversy exists between the plaintiff and each of the defendants in that defendants claim the right to impose a 10% bail bond cost on each acquitted defendant in a criminal proceeding, while plaintiff and each member of said class contends that the enactment of Section 110-7, sub-paragraph (f) "Deposit of Bail Se-

[C-6]

curity" is a deprivation of their rights and property in violation of the 14th Amendment of the Constitution of the United States, and Article 2, Sections 2 and 19 of the Constitution of the State of Illinois.

WHEREFORE, plaintiff prays:

1. That the court decree that this action has been properly commenced as a class action.

2. That the court declare the collection of bail bond costs in criminal proceedings heretofore and hereafter filed in the Circuit Court of St. Clair County, Illinois in cases wherein the defendant in said proceedings has been acquitted or found guilty, and declare said collection to be illegal, null and void.

3. That the court declare that the plaintiff and the members of the class of persons upon whose behalf this action was instituted, be entitled to a refund of all bail bond costs charged against them.

4. That this court enter a binding declaration that Section 110-7, sub-paragraph (f) of the Code of Criminal Proceedings be declared to be unconstitutional and void.

5. That the amounts heretofore collected upon the forfeiture or upon the collection of said bail bond costs be declared to be collected improperly and illegally.

6. That the defendant, Vincent P. Kuebel, as Clerk of the Circuit Court of St. Clair County, Illinois, be required to account to plaintiff and to each of the members of the class of persons upon whose behalf this action was commenced as to all sums which were illegally and improperly collected as bail bond costs, and those sums which have been heretofore collected from defendants in cases wherein the defendants in criminal proceedings were acquitted and or found guilty by the trial courts.

7. That the court determine the amount of refund, if any, the plaintiff and each of the members of the class upon whose behalf this action was maintained, shall be entitled to and to direct the payment of such refunds to the persons entitled thereto, less reasonable attorney's fees to be fixed by the court.

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8. That the court direct the defendant, Vincent P. Kuebel, as Clerk of the Circuit Court of St. Clair County, Illinois, to segregate all sums which may in the future be collected as bail bond costs, from all defendants whether acquitted or found guilty in criminal proceedings.

9. That the court direct that the defendant, Vincent P. Kuebel, as Clerk of the Circuit Court of St. Clair County, Illinois, determine the amount which has been collected by his office from acquitted and guilty defendants since August 14, 1963, forthwith, and that he be directed to notify defendant, Maurice F. Joseph, as County Treasurer of St. Clair County, Illinois, the amount of such sum within a short time to be fixed by the court.

10. That instanter upon receipt of notice of such amount from the aforesaid Clerk of the Circuit Court, defendant, Maurice F. Joseph, as County Treasurer of St. Clair County, be directed to segregate from the funds then in hand in the County Treasurer's Office a sum equal to the amount furnished by the aforesaid Circuit Clerk as representing amounts collected by courts of record in St. Clair County, Illinois, as bail bond costs from defendants who were acquitted and found guilty by trial courts, since August 14, 1963, and to deposit said amount in a special fund subject to the further order of this court, or in the alternative, with an escrowee, to be designated by the court and subject to further order of the court.

11. That the attorney for the plaintiff and members of the class upon whose behalf this proceeding was instituted be awarded reasonable attorney's fees.

12. That for good cause shown the above mentioned order be issued without bond.

13. That the plaintiff and the members of the class upon whose behalf this action was instituted, may be awarded such further and other relief as equity may require.

SAM S. PESSIN,
Attorney for John Schilb.

Sam S. Pessin
Attorney at Law
25 West Main Street
Belleville, Illinois 62220
234-8484

[C-8]

(Jurats and Affidavit Omitted in Printing)

[C-9]

(Summons Filed August 4, 1969 Omitted in Printing)

[C-10]

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT, ST. CLAIR COUNTY, ILLINOIS

(Title Omitted in Printing)

(August 28, 1969)

ANSWER

Vincent P. Kuebel, as Clerk of the Circuit Court of St. Clair County; Maurice F. Joseph, as County Treasurer of St. Clair County; and St. Clair County, Illinois, defendants, for Answer to the Complaint filed herein say:

1. Defendant, Vincent P. Kuebel, admits the allegations of Paragraph 1 of the complaint. And, for further answer, says that he was not appointed, qualified, and acting clerk of the Circuit Court of said county until January 27, 1969.

2. Defendant, Maurice F. Joseph, admits the allegations of Paragraph 2. And, for further answer, says that he was not the acting county treasurer of St. Clair County, Illinois during all of the time as alleged in the complaint.

3. Defendant, St. Clair County, Illinois, admits the allegations of Paragraph 3.

4. Defendants are not sufficiently informed as to the allegations of Paragraph 4 and for that reason deny same.

5. They admit the allegations of Paragraph 5.

6. They admit the allegations of Paragraph 6. And, for further answer, say that they had full authority so to do in accordance with Paragraph (f) of the Act quoted in Paragraph 5.

7. They admit the allegations of Paragraph 7.

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8. They deny that on June 6, 1969, after a trial, the plaintiff was acquitted of the charge of leaving the scene of an accident, and found guilty of obstructing traffic, and was thereafter charged by and paid $7.50 the defendant, Vincent P. Kuebel, Clerk of the Circuit Court of St. Clair County, Illinois, under sub-paragraph (f) of Chapter 38, Section 110-7 "Deposit of Bail Security." They further deny that there are large numbers of defendants to proceedings brought against them in the Circuit Court of St. Clair County, Illinois, similarly situated, but that the names and residences of such persons are unknown to the plaintiff, and they further deny all of the other allegations in said paragraph. And, for further answer, the defendants say that the true facts are that

John Schilb on June 6, 1969 plead guilty to the charge of leaving the scene of an accident and also plead guilty to the charge of obstructing traffic, and further say that he furnished cash bond and that he was refunded $17.50.

9. They deny the allegations of Paragraph 9.
10. They deny the allegations of Paragraph 10.
11. They deny the allegations of Paragraph 11.
12. They deny the allegations of Paragraph 12.
13. They deny the allegations of Paragraph 13.
14. They deny the allegations of Paragraph 14.
15. They deny the allegations of Paragraph 15.

WHEREFORE, defendants pray that the Court deny the relief prayed for by the plaintiff in Paragraphs 1 through 13, and that this case be dismissed at plaintiff's cost.

ROBERT H. RICE,
State's Attorney,
Attorney for Defendants.
By: EUGENE H. WIDMAN,
Assistant State's Attorney.

Courthouse
Belleville, Illinois
Tel. 233-0930
[C-12]

(Jurat and Affidavit Omitted in Printing)

[C-13]

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT, ST. CLAIR COUNTY, ILLINOIS

(Title Omitted in Printing)

(September 2, 1969)

REPLY

Plaintiff, John Schilb, by his attorney, Sam S. Pessin, for reply to defendants' answer states:

8. In reply to the further statements of defendants in paragraph 8 of their answer, this plaintiff states that on two charges filed against him there were findings of guilty and on two charges there were dismissals, which were tantamount to being found not guilty as to such charges dismissed; that there may have been a ministerial error in the writing up of the findings and judgments in each of the four cases but that in essence there would be no change in the actual issues in this case.

SAM S. PESSIN,
Attorney for Plaintiff.

Sam S. Pessin
Attorney at Law
25 West Main Street
Belleville, Illinois 62220
234-8484

[C-14]

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT, ST. CLAIR COUNTY, ILLINOIS

(Title Omitted in Printing)

(October 14, 1969)

STIPULATION

It is stipulated and agreed by and between the parties hereto by their respective attorneys as follows:

1. Defendant, Vincent P. Kuebel, is the duly appointed, qualified and acting Clerk of the Circuit Court of St. Clair County, Illinois, having succeeded his predecessor in office Press Waller; said defendant and his said predecessor were at all times the holders of said office since August 14, 1963.

2. Defendant, Maurice F. Joseph, is the duly elected, qualified and acting Treasurer of St. Clair County, Illinois, and as such officer is the custodian of all funds collected by the aforesaid Circuit Clerks as the 10% bail bond costs under the provisions of Section 110-7(f), Chapter 38, Ill. Rev. Stats., 1963.

3. St. Clair County is now and for more than 50 years last past was a corporate and politic body in Illinois.

4. At all times relevant to the issues of this cause, plaintiff, John Schilb, has been a citizen and resident of the City of Belleville, St. Clair County, Illinois.

5. On On October 14, 1963 the Illinois General Assembly's following act was approved and has been since complied with in said County, the provisions of said Act being as follows: * * *" (Section 110-7, App. A).

(a) The person for whom bail has been set shall execute the bail bond and deposit with the clerk of the court before which the proceeding is pending a sum of money equal to 10% of the bail.

(b) Upon depositing this sum the person shall be released from custody subject to the conditions of the bail bond.

(c) Once bail has been given and a charge is pending or is thereafter filed in or transferred to a court of competent jurisdiction the latter court shall continue the original bail in that court subject to the provisions of Section 110-6 of this Code.

(d) After conviction the court may order that the original bail stand as bail pending appeal or deny, increase or reduce bail.

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(e) After the entry of an order by the trial court allowing or denying bail pending appeal either party may apply to the reviewing court having jurisdiction or to a justice thereof sitting in vacation for an order increasing or decreasing the amount of bail or allowing or denying bail pending appeal.

(f) When the conditions of the bail bond have been performed and the accused has been discharged from all obligations in the cause the clerk of the court shall return to the accused 90% of the sum which had been deposited and shall retain as bail bond costs 10% of the amount deposited.

(g) If the accused does not comply with the conditions of the bail bond the court having jurisdiction shall enter an order declaring the bail to be forfeited. Notice of such order of forfeiture shall be mailed forthwith by

the court to the accused at his last known address. If the accused does not appear and surrender to the court having jurisdiction within 30 days from the date of the forfeiture or within such period satisfy the court that appearance and surrender by the accused is impossible and without his fault the court shall enter judgment for the State against the accused for the amount of the bail and costs of the court proceedings. The deposit made in accordance with subsection (a) shall be applied to the payment of costs. If any amount of such deposit remains after the payment of costs it shall be applied to the payment of the judgment and transferred to the treasury of the county wherein the bond was taken. The balance of the judgment may be enforced and collected in the same manner as a judgment entered in a civil action.

(h) After a judgment for a fine and court costs or either is entered in the prosecution of a cause in which a deposit had been made in accordance with subsection (a) the balance of such deposit, after deduction of bail bond costs, shall be applied to the payment of the judgment.

* * * 6. Since adoption of said Act, defendants, Vincent P. Kuebel and Maurice F. Joseph, and their predecessors in office, acting under the provisions thereof, collected from plaintiff and many other defendants in criminal actions, who were acquitted by trial courts of their respective charges, a sum equal to 10% of their respective deposits of bail security; said collections of said sums by said county officials were made in good faith in accordance with their oaths of office as understood by each of them and under color of the authority of said Act.

7. On January 16, 1969 plaintiff was arrested and charged with (a) leaving the scene of an accident and

posted $50.00 cash bail security thereon and also (b) obstructing traffic and posted $25.00 cash bail security thereon; on June 6, 1969 he was found guilty on one of said charges and not guilty on the other charge and was charged (in addition to any fine) and paid $5.00 and $2.50 for a total of $7.50 as an additional cost charge for such bail.

8. There are a large number of defendants in criminal proceedings in said court who posted cash bonds, and either after being found guilty (whether by trial or

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on plea) or being found not guilty (either by trial or dismissal of the charges), and in each instance there was paid by such defendants and collected by said officials the 10% charge under the provisions of said Act.

9. The essential questions of fact, as concerns the issue in this cause, are similar as to all defendants in all criminal cases in the Circuit Court of said County since the effective date of said Act as to all defendants who posted cash bail security; the questions of law are similar in all such cases also as pertains to the issues of this cause and the issue of the alleged unconstitutional collection of bail bond costs is common to the interest of such defendants in criminal cases in said court.

10. There is a bona fide dispute in this cause, brought without collusion of either of the parties hereto, and it is impractical, if not impossible, to join all members of the class to which plaintiff belongs, as parties to this action; this action will avoid undue and unnecessary multiplicity of actions; plaintiff brings this action in a representative capacity for and on behalf of each of the members of the class with whom his interests as de-

scribed herein are similar; who should proportionately bear a share of the cost of this litigation; the relief to which the members of said class would be entitled is identical to the relief to which plaintiff would be entitled, in the event of an award of relief herein.

11. Since the adoption of said Act substantial sums of money have been collected by said county officials from the aforesaid defendants in criminal cases for the said 10% withholding charges or costs after disposition of their respective cases; an exact account of all of said collections are present in the records of said offices and shall be agreed upon by the parties hereto for subsequent purposes in the event of the Court's awarding relief sought for herein by plaintiff.

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12. Section 110-8 of said Chapter 38, in essence, provides for depositing of cash, stocks or bonds in full amount of bail or pledging interests in real estate double the amount of the amount of bail fixed, without payment of any fee.

13. The fixing of the amount of bail in each particular criminal case is not done by either County Treasurer or Circuit Clerk but by a judge of said court, whose discretion in such respect is not guided by statute, rule of court or any definite, fixed standard; various and divers judges in fact fix the amount of bail for the same types of offenses at various and divers amounts, without relationship as to guilt or innocence of the particular defendant in a criminal charge, and without relationship of the particular offense charged and the bail fixed.

14. The actual cost of administering the provisions of said Sections 110-7 and 110-8 are substantially the

same but there may probably be a slightly greater cost in the administration of Section 110-8.

15. The sole issue for determination by the court presently is one of law; plaintiff contends that said Section 110-7 is unconstitutional and defendant contends otherwise.

16. That plaintiff shall file his supporting memorandum within 5 days of filing this stipulation; defendants shall file their answering memorandum thereto within 10 days thereafter and plaintiff his reply thereto within an additional 5 days.

SAM S. PESSIN,
Attorney for Plaintiff.
ROBERT H. RICE, State's Atty.,
Attorney for Defendants.
By: EUGENE H. WIDMAN,
Assistant State's Attorney.

[C-18]

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT, ST. CLAIR COUNTY, ILLINOIS
(Title Omitted in Printing)
(January 6, 1970)

ORDER

This case having been submitted to the Court on Stipulation of Facts, and the Court having examined same, and the briefs of the plaintiff and defendants having been filed and considered by the Court;

The Court finds the issues in favor of the defendants and against the plaintiff and, particularly, finds that Section 110.7, Sub-paragraph (f) of the Criminal Code proceedings is constitutional;

WHEREFORE, IT IS ORDERED that the plaintiff's complaint be and is hereby dismissed at plaintiff's cost.

Dated: June 6, 1970.

ENTER:

JAMES W. GRAY,
Associate Circuit Judge.

[C-19]

APPEAL TO THE SUPREME COURT OF ILLINOIS,
FROM THE CIRCUIT COURT
20TH JUDICIAL CIRCUIT OF ILLINOIS
ST. CLAIR COUNTY, ILLINOIS

January 9, 1970)

(Title Omitted in Printing)

You are hereby notified that plaintiff-appellant, John Schilb, individually and in a representative capacity for and on behalf of a class of persons, described in the complaint in the above entitled cause, has filed on January 9, 1970, his Notice of Appeal in the above cause, copy of which is attached hereto.

SAM S. PESSIN,
Attorney for Plaintiff-Appellant,
25 West Main Street,
Belleville, Illinois 62220
234-8484

[C-20]

APPEAL TO THE SUPREME COURT OF ILLINOIS,
FROM THE CIRCUIT COURT
20TH JUDICIAL CIRCUIT OF ILLINOIS
ST. CLAIR COUNTY, ILLINOIS

(January 9, 1970)

(Title Omitted in Printing)

NOTICE OF APPEAL

TO: VINCENT P. KUEBEL, as Clerk of the Circuit Court of St. Clair County, Illinois; MAURICE F. JOSEPH, as County Treasurer of St. Clair County; and County of St. Clair, Illinois

AND

ROBERT H. RICE, State's Attorney of St. Clair County; EUGENE H. WIDMAN, of Counsel; Room 310, Court House Annex, Belleville, Illinois.

You are hereby notified that John Schilb, individually and in a representative capacity for and on behalf of a class of persons, described in the complaint in the above entitled cause, hereby appeals to the Supreme Court of Illinois, from the judgment order entered in this cause on January 6, 1970, which said judgment order was final on the date of its entry, by dismissing plaintiff's complaint.

Said plaintiff-appellant hereby prays that said judgment order entered on January 6, 1970, be reversed and

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remanded to the trial court for a hearing on the accounting due from defendants.

Dated this 9th day of January, A.D. 1970.

SAM S. PESSIN,
Attorney for Plaintiff-Appellant.

Sam S. Pessin
Attorney at Law
25 West Main Street
Belleville, Illinois 62220
234-8484

[C-22]

(Jurat and Affidavit Omitted in Printing)

(Title Omitted in Printing)

[C-23]

APPEAL TO THE SUPREME COURT OF ILLINOIS,
FROM THE CIRCUIT COURT
20TH JUDICIAL CIRCUIT OF ILLINOIS
ST. CLAIR COUNTY, ILLINOIS
(January 9, 1970)

(Title Omitted in Printing)

NOTICE

TO: VINCENT P. KUEBEL, as Clerk of the Circuit Court of St. Clair County, Illinois; MAURICE F. JOSEPH, as County Treasurer of St. Clair County; and County of St. Clair, Illinois

AND

ROBERT H. RICE, State's Attorney of St. Clair County; EUGENE H. WIDMAN, of Counsel; Room 310, Court House Annex, Belleville, Illinois.

Please take notice that John Schilb, individually and in a representative capacity for and on behalf of a class of persons, described in the complaint in the above entitled cause, filed a Praecipe in the above cause on the 9th day of January, 1970, a copy of which is attached for your information.

SAM S. PESSIN,
Attorney for Plaintiff-Appellant
25 West Main Street
Belleville, Illinois 62220
234-8484

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APPEAL TO THE SUPREME COURT OF ILLINOIS,
FROM THE CIRCUIT COURT
20TH JUDICIAL CIRCUIT OF ILLINOIS,
ST. CLAIR COUNTY, ILLINOIS
(January 9, 1970)
(Title Omitted in Printing)

PRAECIPE FOR RECORD

John Schilb, individually and in a representative capacity, for and on behalf of a class of persons, described in the complaint in the above entitled cause, pursuant to Rule 322 of the Rules of the Supreme Court of Illinois, requests that the Clerk of the Circuit Court of the 20th Judicial Circuit, St. Clair County, Illinois incorporate in the Record of Appeal to the Supreme Court of Illinois, the following:

1. Complaint filed by plaintiff.

2. Summons showing service on defendants.

3. Answer of defendants.

4. Reply of Plaintiff, John Schilb, to defendants' answer.

5. Stipulation of facts entered into and filed by plaintiff and defendant.

6. Order of January 6, 1970, finding issues in favor of defendants, and dismissing plaintiff's complaint at plaintiff's costs.

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7. All other pleadings, stipulations, orders and other matters filed in the trial court record prior to or subsequent to this Praecipe for Record.

8. Clerk's certificate of trial court record.

SAM S. PESSIN
Attorney for Plaintiff-Appellant

Sam S. Pessin
Attorney at Law
25 West Main Street
Belleville, Illinois 62220
234-8484

[C-26]

(Affidavit Omitted in Printing)

[C-27]

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT OF ST. CLAIR COUNTY, ILLINOIS

Date Filed: July 29, 1969

For Plaintiff:
Sam S. Pessin

(Title Omitted in Printing)

Date, 7-29-69; Court, $25.00; Library Fee, $1.00; Description, Filing Fee; Total Charged, $26.00; Cash Paid, $26.00.

The Court finds the issues in favor of the defendants and against plaintiff and, particularly, finds that Section 110.7 Sub-paragraph (f) of the Criminal Code proceedings is constitutional.

Wherefore, it is ordered that the Plaintiff's complaint be and is hereby dismissed at plaintiff's costs. Enter: J.W.G.

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I, Vincent P. Kuebel, Clerk of the Circuit Court of St. Clair County, in the State aforesaid, do hereby certify that the above and foregoing is a true, full, perfect and complete copy of documents filed in a certain cause lately pending in said Court, on the Civil side thereof, wherein John Shilb, individually etc., Plaintiff, vs. Vincent P. Kuebel, etc., et al., Defendants.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court, at Belleville, this 1st day of June A.D. 1970.

VINCENT P. KUEBEL, Clerk.
CAROL SCHNUR, Deputy.

[2]

(Brief for Appellants Omitted in Printing.)
(Filed February 2, 1970.)

[3]

(Appellees' Brief Omitted in Printing.)
(Filed February 16, 1970.)

[4]

(Excerpts of Record Omitted in Printing.)
(Filed March 16, 1970.)

[5]

(Reply Brief Omitted in Printing.)
(Filed March 16, 1970.)

[6]

(Brief For Amicus Curiae Matthew J. Danaher, Clerk of the Circuit Court of Cook County and Edmund J. Kucharski, Treasurer of Cook County, Illinois Omitted in Printing.)
(Filed March 16, 1970.)

[7]

(Brief and Argument of Amicus Curiae, Frederick Douglas Andrews, Edward Crawford, Andrew Brown, Curlee Reed and Andrew Peden, Plaintiffs in the Circuit Court of Cook County, Illinois Omitted in Printing.)

(Filed April 10, 1970.)

[8]

Dissenting opinion of Mr. Justice Kluczynski filed December 3, 1970.

OPINION

(October 7, 1970)

Docket No. 42845—Agenda 47—March 1970.

JOHN SCHILB *et al.*, Appellants, *vs.* VINCENT P. KUEBEL, Circuit Clerk, *et al.*, Appellees.

Mr. JUSTICE BURT delivered the opinion of the court:

Plaintiffs appeal from an order of the circuit court of St. Clair County dismissing their complaint against defendants, clerk of the circuit court of St. Clair County, County Treasurer of St. Clair County and County of St. Clair in a class action wherein plaintiffs alleged that the cost retention provisions of section 110-7(f) of the Code of Criminal Procedure of 1963 (Ill. Rev. Stat. 1963, ch. 38, par. 110-7(f) are unconstitutional, and sought recovery on behalf of all those who had been charged with and had paid bail bond costs under the statute in question in the circuit court of St. Clair County from and after the effective date of the act. The case involves substantial constitutional questions, giving this court jurisdiction on direct appeal.

The cause was submitted in the trial court on a stipulation of facts which we summarize here to the extent

necessary for purposes of this decision. The act in question was adopted on August 14, 1963. Since that time Vincent P. Kuebel, clerk of the circuit court of St. Clair County, and Maurice J. Joseph, treasurer of said county, and their predecessors in office, acting under the statutory provisions, have collected from plaintiff, John Schilb, and many other defendants in criminal actions, who were acquitted by trial courts of their respective charges, a sum equal to 10% of their respective deposits of bail security. These collections were made in good faith by these officials in accordance with their oaths of office as understood by them and under color of authority of the act. The exact account of all of said collections are present in the records of said offices and should be agreed upon by the parties for subsequent purposes in the event the court shall award the relief sought by plaintiffs.

On January 16, 1969, Schilb was arrested and charged with leaving the scene of an accident, on which he posted $50 cash bail security and obstructing traffic on which $25 cash bail was posted. He was found guilty of one charge and not guilty of the other. He was charged and paid, in addition to any fine, $5 and $2.50, or a total of $7.50 as cost charges for such bail. A large number of other defendants have paid the 10% bail charge required by the statute after being found guilty (whether by trial or on plea) or upon being found not guilty (either by trial or dismissal.) It was agreed that the essential questions of fact, as concerns the issue, are similar as to all defendants in all criminal cases in said circuit court, since the effective date of the act, who posted cash bail security, and that questions of law are similar in all such cases also as they pertain to the issues, particularly the claim of unconstitutional collection of bail bond costs

which is common to the interest of such defendants in criminal cases in said court.

The parties further agreed that there was a *bona fide* dispute between them brought without collusion; that it is impractical if not impossible to join all members of the class to which plaintiff belonged as parties; that this action would avoid undue and unnecessary multiplicity of actions and that plaintiff, Schilb, brings the action in a representative capacity for and on behalf of each member of the class whose interests are similar who would proportionately share in the expenses of the litigation.

In addition to including in their stipulation the entire provisions of section 110-7, the parties refer to section 110-8 (Ill. Rev. Stat. 1969, ch. 38, par. 110-8) and state that it provides in essence for depositing of cash, stocks or bonds in the full amount of bail or pledging interests in real estate in double the amount of bail fixed without payment of any fee and that actual costs of administering the provisions of sections 110-7 and 110-8 are substantially the same but that there may probably be a slightly higher cost attendant upon administering section 110-8.

Finally, the parties agreed that the amount of bail in each particular case is not fixed by the clerk or treasurer but by a judge whose discretion is not guided by statute, rule of court or any fixed standard; that various judges fix the amount of bail for the same types of offenses at various and divers amounts, without relationship as to guilt or innocence of the particular defendant and without relationship of the particular offense and the bail fixed.

Plaintiffs contend that the cost retention provision of section 110-7(f) of the Code of Criminal Procedure is

unconstitutional because it violates the equal-protection and due-process clauses of the fourteenth amendment to the Federal constitution and section 2 of arctile II of the constitution of Illinois. Specifically it is urged that the cost retention provision creates a discriminatory disparity within a homogeneous class; that it operates to create an unconstitutional disparity between the affluent and nonaffluent and that it is unconstitutional as creating a disparity among those obtaining release by the deposit of 10% of the amount of bail. Additionally it is claimed that the provision is illegal and void as in violation of section 19 of article II of the Illinois constitution because it amounts to requiring an assessment of costs against a discharged defendant. Defendants argue that these claims of unconstitutionality are without merit. They also suggest that there is no basis for the bringing of a class action under the facts here involved.

In 1963 the General Assembly enacted the Code of Criminal Procedure (Ill. Rev. Stat. 1963, ch. 38, pars. 100—1 *et seq.*) Among its comprehensive provisions are those of article 10 relative to bail in criminal cases. (Ill. Rev. Stat. 1963, ch. 38, par. 110-1 to 110-5 inclusive.) Section 110-2 provides for the release of an accused on his own recognizance where from all the circumstances the court is of the opinion that the accused will appear as required either before or after conviction. The statute imposes criminal sanctions for failure to appear as required as well as provisions for forfeiture and collection. (Ill. Rev. Stat. 1963, ch. 38, par. 110-2.) Section 110-7 represents a new departure in dealing with the problems of bail in this State. It provides that a person for whom bail has been set shall execute a bail bond and deposit with the clerk of the court a sum of money equal to 10%

of the bail upon the deposit of which he shall be released subject to the conditions of the bond which involve forfeiture of the full amount for nonappearance as well as the imposition of a criminal penalty. Section 110-7(f) provides for a return of 90% of the bail deposit when the conditions of the bond have been performed and the accused has been discharged from all obligations with the stipulation that the clerk shall retain as bail bond costs 10% of the amount deposited. (Ill. Rev. Stat. 1963, ch. 38, pars. 110-7(a), (b), (f).) The amount retained represents one percent of the amount of bail originally set by the court. Section 110-8 provides for a different type of procedure in posting bail from that prescribed in section 110-7. It provides that "in lieu" of the bail deposit provided for in section 110-7 any person for whom bail has been set may execute the bail bond with or without sureties, which bond may be secured by a deposit with the clerk of an amount equal to the bail, of cash, or stocks and bonds, or by real estate situated in this State with unencumbered equity not exempt, owned by the accused or sureties worth double the amount of bail set in the bond. (Ill. Rev. Stat. 1963, ch. 38, par. 110-8.) With the exception of certain changes not directly involved in the questions presented in this appeal the foregoing statutory provisions remain substantially the same at this time and the three alternative means or methods specified in article 110 constitute the only ways in which release on bail can be had in this State. See: Ill. Rev. Stat. 1969, ch. 38, pars. 110-2, 110-7, 110-8.

The above legislative enactments represent substantial reforms in bail practices in this State and came about only after extensive studies of certain evils inherent in our former system and a comparison with practices in the Federal courts and in other jurisdictions. (See Com-

mittee Comments, S.H.A., ch. 38, § 110-1 *et seq.* 298 *et seq.*) From this rather extensive and revealing discussion it appears that the central purpose of the legislature in enacting sections 110-7 and 110-8 was to severely restrict the activities of professional bail bondsmen who customarily collected 10% of the amount of a bond as a fee which was retained whether or not the conditions of the bond were met by the accused. The prevalence of this practice was noted in our opinion in *People ex rel. Gendron* v. *Ingram,* 34 Ill. 2d 623, 626, in which this court sustained the constitutionality of the 1965 amendment to section 110-15 of the Code of Criminal Procedure making sections 110-7 and 110-8 the exclusive means of posting bonds in criminal cases in this State. In short, as the Committee Comments show, the object of the statutes was to reduce the cost of liberty to arrested persons awaiting trial. One of the matters noted in connection with the former practice was that the pecuniary loss deterrent to jumping bail which was its central idea was simply not working in a system where payment of a bond premium was required without regard to performance of conditions. At the same time certain studies showed that, in spite of collecting a 10% fee, actual judgment on forfeitures paid by professional bondsmen amounted to only one per cent of the bonds written. It was reasoned, therefore, by those who studied the problem that a much fairer system would result if a plan such as that provided by section 110-7 were evolved with an accused, who has faithfully performed the conditions of his bond, retaining substantially the amount formerly pocketed by the professional bondsman while allowing to the courts a reasonable fee as bond costs for handling bail bonds and offsetting the monetary amount of any loss resulting from

the occasional bail jumper where the professional bondsman under the former system might have forfeited the amount of bail. Otherwise stated, the ultimate objective of this reform was to regain from professional bondsmen the control of bail releases and restore such control to the courts where it rightfully belongs. (See Bowman, The Illinois Ten Per Cent Bail Deposit Provision, 1965 Ill. L. Forum 35, 36-37.) As the author points out, the scheme devised in this State has since been copied in bills introduced in other States and in Congress. As finally adopted the bill passed by Congress eliminated the 10% retention of the cash deposit. (18 U.S.C. 3146(a)(3).) But New York's applicable legislation provides that cash, stocks and bonds may be deposited in lieu of bail and that a fee of two per cent for receiving, keeping and paying out the same may be charged. See: N.Y. Code of Criminal Procedure, vol. 66, sec. 586.

Plaintiffs' first point is that section 110-7(f) of the Code of Criminal Procedure is unconstitutional because it requires those seeking release under the provisions of section 110-7 to pay bond costs, whereas those who use either section 110-2 (recognizance) or section 110-8 (deposit of full amount in cash or securities or pledge of real estate in double the amount) are not required to pay any costs whatever. In this connection plaintiffs argue that all accused are *sui generis,* for each seeks pretrial release, and that to require payment of costs as a condition of pretrial freedom in the one case and not in the others constitutes an unconstitutional discrimination among the members of a homogenous class.

With respect to plaintiffs' position on unconstitutional classification it will be observed that it rests entirely upon the assumption that there is no basic or reasonable

difference between those obtaining release under sections 110-2, 110-7 and 110-8. It is said that all are accused of crime and seek release from pretrial custody and that the difference in their treatment relative to cost is a violation of fundamental concepts of equal protection and due process. In other words, the argument is that because the result of release is sought in each case there is but one class of persons who must be treated alike. However, though the end result may be release in all cases, whatever course may be followed, it must be apparent, we believe, that the means by which release is sought is entirely different in each of the sections of the statute in question. This is not only factually so but historically the legislative approach to the problems presented was to design the different sections of the statute to meet specific separate problems. (See Committee Comments, S.H.A., ch. 38, § 110-1 *et seq.* p. 298 *et seq.*) Thus section 110-2 providing for release on the accused's own recognizance was designed to meet a condition revealed by factual studies which proved that the great majority of persons released on bail have no intention of violating bail and will appear for trial. The studies further developed a second premise, that to the extent that pecuniary loss is a deterrent, such financial loss should be minimized in the case of the person who appears for trial. Section 110-7 (deposit of 10% of the amount fixed for bail with a return of 90% of the deposit on performance of conditions) was designed specifically to fulfill the needs shown by the second premise and curtail the activities of the professional bondsman. This section, by its wording, is obviously designed as the principal method to be used in giving bail. Section 110-8 provides for a method which may be used in "lieu of the bail deposit

provided for in section 110-7" and, according to the comment, is designed primarily to meet the need of a method of posting relatively small amounts of cash bail in traffic cases and the like. It is stated in the above reference at p. 324: "It should always be kept in mind, however, that section 110-7 provides for one type of procedure in posting bail, section 110-8 another."

It appears that the legislature did not consider itself as dealing with a single problem—*i.e.*, a provision of procedures for those entitled to bail generally. Instead it regarded situations possibly giving rise to separate needs and sought to accommodate those requirements. As to section 110-7, as already related, it sought to reduce the cost of bail and the high incidence of "bail gouging" by providing a method whereby any citizen accused of crime might have his liberty pending trial with a minimum of cost. On the other hand, it was careful to recognize and protect the rights of those who could and should be released upon their own recognizance within the limits of judicial discretion without any bond cost whatever. In none of the provisions in question is release conditioned upon the payment of bail costs in advance nor can payment of the one percent fee ultimately deducted under section 110-7(f) be considered a condition precedent to the selection of section 110-7 as the method of acquiring release. The only condition precedent to release under the provisions of section 110-7 is the payment of 10% of the amount of bail as fixed by the court, and plaintiffs disclaim any thought of questioning the constitutionality of that requirement, for they say that the sole question before the court is the constitutionality of subparagraph (f) of section 110-7. Further, they say: "The plaintiffs herein wish to make it eminently clear that they do not

in any manner fault the principles of Article 110 of the Illinois Code, they do however, take exception to the cost provision of Section 110-7(f) which is patently unconstitutional." The ultimate question on this portion of the case is, therefore, whether the provisions of subsection (f) of section 110-7 are fatal to an otherwise admittedly valid legislative classification as provided in the three sections in question and particularly that of section 110-7.

This court has held that the test whether a legislative act affords equal protection to all persons affected by it is "whether the legislative enactment requires the same means and methods to be employed alike by the persons composing the class affected so that the law operates uniformly on all persons similarly situated." (*Reif* v. *Barrett*, 355 Ill. 104, 121.) Where a law affects all members of the same class alike it is not objectionable as constituting class legislation. (*Smith* v. *Hill*, 12 Ill. 2d 588, 598.) Under article 10 of the Code of Criminal Procedure as presently enacted those entitled to bail have a choice of three mehods to be used in securing release, and the choice is entirely voluntary and without compulsion. Those who elect to secure release by the deposit of 10% of the amount of bail under the provisions of section 110-7 constitute a separate class under the legislative plan and purpose as already indicated. They are not automatically placed in this class or category by the law. They join only by the exercise of their own volition. Presumably they know that the amount deposited will be subject to deduction and we know of no law or constitutional provision which would preclude their being required to pay a reasonable amount for the privilege extended to those who elect to come into this class. The requirement of a fee to help defray the cost of adminis-

trative services in the courts is a traditional and basic concept recognized as valid by this court. See: *People ex rel. Flanagan* v. *McDonough;* 24 Ill. 2d 178, 180-181.

Plaintiffs also contend that the cost retention provision of section 110-7(f) creates an unconstitutional disparity between the affluent and nonaffluent. It is said for a supposed example that accused "A" availing himself of section 110-8 deposits the full amount of bond and pays no cost, whereas accused "B", lacking sufficient property, obtains his release by depositing 10% of the full amount of bond under section 110-7 and is assessed a cost. It is argued that accused "B" is thus assessed a cost merely because his lack of affluence makes him unable to obtain his release by depositing the full amount under the provisions of section 110-8. Without stating any factual source, plaintiffs further state that "a considerable percentage of individuals, like accused 'B' have *no choice* but to seek release on their own recognizance under Section 110-2 or the 10% provision of Section 110-7" because they have neither cash nor real estate in sufficient amount to post the full amount of their bail. These are said to be "poor men" who should not be discriminated against due to their lack of wealth. Plaintiffs say that if the size of a deposit for bail is the distinguishing factor which rendered this group different from those who deposit the full amount of bail, there is an unconstitutional differentiation which is not cognizable in law and creates a disparity based on wealth. In support of their position plaintiffs cite a number of cases such as *Griffin* v. *Illinois,* 351 U.S. 12, 100 L. Ed. 891, 76 S. Ct. 585, establishing the general proposition that the individual cannot be penalized in his quest for justice due to lack of wealth. Defendants concede the validity of this principle

but deny that it is applicable under the facts presented here.

The difficulty with plaintiffs' position is that it is based primarily on the assumption that a majority or at least "a large percentage" of those seeking bail would prefer to elect to proceed under section 110-8 but lack the financial means to do so and are therefore forced against their wills to ask for bail under section 110-7 by posting the deposit. We find no support for this assumption in any of the stipulated facts. As we view the situation it is just as reasonable to assume that most of those eligible would elect to perfect bail under section 110-7 because of the convenience it affords and the very small cost of only one percent actually involved. Proceedings under section 110-8 necessarily involve tying up money and property for an indefinite period. In the case of a large bond the amount pledged would be in proportion and the consequent economic loss through deprivation of the opportunity to invest these funds could be considerable. It is reasonable to suppose, therefore, that even the relatively affluent would prefer to make bail under section 110-7. In any event we do not believe it can reasonably be said that choice between the means to be used is necessarily dictated by wealth or lack of wealth of the accused.

Whether questions of classification are involved the reasons justifying the classification need not appear on the face of the statute and the classification will be upheld if any state of facts can reasonably be conceived to sustain it. The burden therefore rests upon one who assails the statute to negate the existence of such facts. (*Thorpe* v. *Mahin,* 43 Ill. 2d 36, 45; *Department of Revenue* v. *Warren Petroleum Corp.,* 2 Ill. 2d 483, 489-490.)

As already indicated, we believe that facts can reasonably be conceived to sustain the legislation here involved as against plaintiffs' argument that there is necessarily a discrimination based on wealth. We find nothing in plaintiffs' argument which reasonably tends to negate the existence of those facts and certainly there is nothing by way of concrete evidence which does so.

As to plaintiffs' argument that the cost retention provision of section 110-7(f) creates a disparity among those obtaining release by the deposit of 10% of the amount of bail, it is said that accused "A" whose bond is set at $10,000 must deposit $1,000 and that upon fulfillment of conditions he receives a refund of $900 with the result that he has paid a cost of $100. "B" on the other hand, whose bond is fixed at only $1,000, deposits $100 and receives a refund of $90 resulting in a cost of only $10. It is claimed that there is no rational basis for this difference. While the dollar amount in the supposed cases is different, each has paid an amount equal to one percent of his bail and therefore there is payment of the same proportionate amount in each case. Plaintiffs present no authority which sustains the proposition that enacting a charge in the same proportion in such cases involves unconstitutional discrimination and we know of no authority which would support this claim. Historically many fees and charges for the service of court officers have been fixed in proportion to the amount involved. As far as we know there has been no suggestion of unconstitutional action in such cases as long as all persons similarly situated are charged in the same proportion and at the same rate. Flat rates are also found in the field of taxation, as defendants suggest, including income taxes, retailers' occupation taxes, real-estate taxes, use

taxes, and inheritance and transfer taxes. The constitutionality of these enactments has been repeatedly sustained by the courts.

Finally, there is the contention that the cost provision of section 107-7(f) is illegal and void because it amounts to an assessment of court costs against a discharged defendant. Plaintiffs cite *Wells* v. *McCullock*, 13 Ill. 606, and *Giaccio* v. *Pennsylvania*, 382 U.S. 399, 15 L. Ed. 2d 447, 86 S. Ct. 518, on this point. *Wells* involves an attempt to impose on an acquitted defendant court costs he has made in his defense. The court, relying largely upon the provisions of the statute relative to disposition of the question of costs in such cases, held that the defendant was not liable for their payment. In *Giaccio* the validity of a Pennsylvania statute authorizing the jury to impose the costs of a criminal prosecution on an acquitted defendant in a misdemeanor case was in question. The court held the statute unconstitutional on the ground of vagueness and the absence of any standards sufficient to enable a defendant to protect himself against arbitrary and discriminatory imposition of costs by a jury. But it did not say that the imposition of such costs would be unconstitutional in any event. However, whatever the rule might be as to the imposition of court costs on an acquitted or discharged defendant, it has no application here. The payment of costs for prosecution is governed by an entirely different statute from that dealing with costs charged for the administration of bail bonds. The statute concerning the latter, as already observed, is section 110-7 of the Code of Criminal Procedure. Costs of prosecution in criminal cases are provided for in section 180-3 of the Code of Criminal Procedure as follows: "When any person is convicted of an offense under any statute, or at

common law, the court shall give judgment that the offender pay the costs of the prosecution." (Ill. Rev. Stat. 1969, ch. 38, par. 180-3.) This statute obviously refers only to court costs and has no reference to bond costs which are chargeable regardless of what subsequently occurs in the prosecution of the case and regardless of the guilt or innocence of the accused. It may be conceded that court costs sustained in his defense may not properly be assessed against an accused who has won his discharge or acquittal but that has no bearing whatever on bond costs and the retention of a percentage of such costs is not tantamount to the assessment of court costs against a discharged defendant.

In conclusion we find that the classifications provided for in the statutes here involved bear a reasonable relation to the objects sought to be accomplished and are uniform as to all members of a particular class sought to be affected. No unconstitutional discrimination is involved and the legislative enactments are not in violation of fundamental concepts of due process or equal protection of the law. Since the conclusion we have reached favors constitutionality it becomes unnecessary to discuss the other question raised, *i.e.*, the propriety of a class action.

The judgment of the circuit court of St. Clair County is affirmed.

Judgment affirmed.

Mr. JUSTICE KLUCZYNSKI, dissenting:

I cannot agree with the conclusions of the majority opinion.

Through *Griffin* v. *Illinois,* 351 U.S. 12, 100 L. Ed. 891, 76 S. Ct. 585, and its progeny, it has become well established that the equal-protection and due-process

clauses of the fourteenth amendment require that a defendant not be penalized in a criminal proceeding due to a lack of wealth. I believe that this type of penalty exists in the treatment of various defendants under sections 110-7 and 110-8 of the Code of Criminal Procedure. A disparity of treatment results because under 110-7 the clerk retains 10% of the bail deposit as a cost whereas under 110-8 or 110-2, no costs are involved. It is discriminatory in that some defendants cannot voluntarily choose under which bail provision they will be released. The defendant who, because of lack of wealth, cannot meet the requirements of 110-8 and who cannot qualify for release under 110-2, is forced to seek relief under 110-7, the only section which involves a cost. The majority would have us believe that there are no nonaffluent defendants or that if given the choice most defendants would choose section 110-7 for economic reasons. This court must take judicial notice of the fact that many defendants cannot afford to pay the full amount of the bail. Plaintiff has cited many authorities (Bail Reform Act of 1966, 18 U.S.C. 3141-3152; Congressional Record, vol. 112 Con. Rec. 89th Congress, Second Session pp. 12488-12504; S.H.A. ch. 38, art. 110, Committee Comments, p. 298; Attorney General's Committee on Poverty and the Administration of Criminal Judicial Procedure, U.S.C. Cong. and Admin. News 1966; National Conference on Bail and Criminal Justice, May 27, 1964) for the proposition that as the amount of bail increases, the percentage of defendants who can pay the full amount of the bail decreases. In addition, the Committee Comments (S.H.A. ch. 38, art. 110, at p. 300) state that section 110-8 is an alternative to 110-7 for "those who have the means." Once it is established that certain defendants are not financially able to proceed under section 110-8, it is no longer significant

that most or all defendants would elect to proceed under section 110-7. The important consideration is not what section they would elect, but rather whether every defendant has a choice of the two sections. Realizing that certain defendants have no choice but to pay a cost under 110-7, while other financially able defendants can elect to pay nothing under 110-8, I must find that the sections in question deny equal protection and due process.

Further, in *Giaccio* v. *Pennsylvaia,* 382 U.S. 399, 15 L. Ed. 2d 447, 86 S. Ct. 518, the United States Supreme Court considered the question whether a defendant may be punished after finding him not guilty. The concurring opinion specifically found: "* * * the Due Process Clause of the Fourteenth Amendment does not permit a State to impose a penalty or costs upon a defendant whom the jury has found not guilty of any offense with which he has been charged." (382 U.S. at 405.) This same concept has been recognized in Illinois in our constitution, case law, and legislative enactment. Section 19 of article II of the Illinois constitution provides that every person "ought to obtain, by law, right and justice freely, and without being obliged to purchase it, * * *." Any defendant who is forced through economic circumstances to proceed under section 110-7 is "obliged" to pay costs for his constitutional right to pretrial liberty in violation of this provision.

This court, in *Wells* v. *McCullock,* 13 Ill. 606, held that a party who is indicted under the Criminal Code, and is acquitted, is not liable for costs. While it is true that the case involved the interpretation of a statute then in effect, a statute similar to it is presently in effect. (Ill. Rev. Stat. 1963, ch. 53, par. 32.) The court in *Wells* found that "An acquittal, or other legal discharge, ab-

solves the defendant from the payment of *all* costs." (Emphasis added.) (13 Ill. at 608.) Any cost, whether it be termed court cost or administrative cost, is an expense in a criminal defense, and if the defendant is acquitted, imposing such a cost, in my opinion, violates the due-process clause and section 19 of article II of the Illinois constitution.

Mr. JUSTICE SCHAEFER joins in this dissent.

[9]

(October 7, 1970)

UNITED STATES OF AMERICA

STATE OF ILLINOIS)
SUPREME COURT) ss.

AT A TERM OF THE SUPREME COURT, begun and held in Springfield, on Monday, the fourteenth day of September in the year of our Lord, one thousand nine hundred and seventy, within and for the State of Illinois.

Present: ROBERT C. UNDERWOOD, Chief Justice
Justice WALTER V. SCHAEFER
Justice DANIEL P. WARD
Justice CASWELL J. CREBS
Justice THOMAS E. KLUCZYNSKI
Justice JOHN T. CULBERTSON, JR.
Justice MARVIN F. BURT
WILLIAM J. SCOTT, Attorney General
ROBERT G. MILEY, Marshal
Attest: JUSTIN TAFT, Clerk

BE IT REMEMBERED, that, to-wit: on the 7th day of October, A.D. 1970, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said Court, had and entered of record, to-wit:

John Schilb individually and in a representative capacity for and on behalf of each member of a class of persons who have since August 14, 1963 been, or who have hereafter been; (a) named in a criminal proceeding in the Circuit Court of St. Clair County, Illinois, or any Department or Division thereof; (b) required to post a deposit of bail security and was acquitted by the trial court, and; (c) who was required to pay as bail bond costs, 10% of the bail security, said person had deposited, under an act in relation to the deposit of bail security approved August 14, 1963,

Appellant

No. 42845

vs.

Vincent P. Kuebel, as Clerk of the Circuit Court of St. Clair County; Maurice F. Joseph, as County Treasurer of St. Clair County, and County of St. Clair, Illinois,

Appellees.

Appeal from Circuit Court St. Clair County CIV 69-1455

And now, on this day, this cause having been argued by counsel, and the Court, having diligently examined and inspected as well the record and proceedings aforesaid, as matters and things therein assigned for error, and now, being sufficiently advised of and concerning

the premises for that it appears to the Court now here, that neither in the record and proceedings aforesaid, nor in the rendition of the judgment aforesaid, is there anything erroneous, vicious or defective, and in that record there is no error.

THEREFORE, it is considered by the Court that the judgment of the Circuit Court of St. Clair County aforesaid, BE AFFIRMED IN ALL THINGS AND STAND IN FULL FORCE AND EFFECT, notwithstanding the said matter and things therein assigned for error.

I, JUSTIN TAFT, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the Seal of said court this — day of ————————.

Clerk,

Supreme Court of the State of Illinois.

[10]

(Petition for Rehearing Omitted in Printing.)

[11]

(December 3, 1970)

UNITED STATES OF AMERICA

STATE OF ILLINOIS }
SUPREME COURT } ss.

AT A TERM OF THE SUPREME COURT, begun and held in Springfield, on Monday, the ninth day of November in the year of our Lord, one thousand nine hundred and seventy, within and for the State of Illinois.

Present: ROBERT C. UNDERWOOD, Chief Justice
Justice WALTER V. SCHAEFER
Justice DANIEL P. WARD
Justice CASWELL J. CREBS
Justice THOMAS E. KLUCZYNSKI
Justice JOHN T. CULBERTSON, JR.
Justice MARVIN F. BURT
WILLIAM J. SCOTT, Attorney General
ROBERT G. MILEY, Marshal
Attest: JUSTIN TAFT, Clerk

BE IT REMEMBERED, that, to-wit: on the 3rd day of December, A.D. 1970, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said Court, had and entered of record, to-wit:

JOHN SCHILB, Indv., etc.,
Appellant

No. 42845

vs.

VINCENT P. KUEBEL, as Clerk of the Circuit Court of St. Clair County; et al., etc.,
Appellees.

Appeal from Circuit Court St. Clair County

And now, on this day, the Court having duly considered the petition for rehearing filed herein, and being

now fully advised of and concerning the premises, doth overrule the prayer of the petition and denies a rehearing in this cause.

[12]

(Notice, Motion for Reconsideration and Suggestions Filed December 10, 1970, Omitted in Printing)

[13]

(January 14, 1971)

UNITED STATES OF AMERICA

STATE OF ILLINOIS)
SUPREME COURT) ss.

AT A TERM OF THE SUPREME COURT, begun and held in Springfield, on Monday, the eleventh day of January in the year of our Lord, one thousand nine hundred and seventy-one, within and for the State of Illinois.

Present: Robert C. Underwood, *Chief Justice*
Justice Walter V. Schaefer
Justice Daniel P. Ward
Justice Joseph H. Goldenhersh
Justice Thomas E. Kluczynski
Justice Charles H. Davis
Justice Howard C. Ryan
William J. Scott, Attorney General
Robert G. Miley, Marshal
Attest: Justin Taft, Clerk

BE IT REMEMBERED, that, to-wit: on the 14th day of January, A.D. 1971, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said Court, had and entered of record, to-wit:

JOHN SCHILB, Indv., etc.,
Appellant

No. 42845

vs.

VINCENT P. KUEBEL, as Clerk of the Circuit Court of St. Clair County; et al., etc.,
Appellees.

Appeal from Circuit Court St. Clair County

And now, on this day, the Court having duly considered the motion by appellant for reconsideration of the order denying petition for rehearing, and being now fully advised of and concerning the premises;

IT IS HEREBY ORDERED that the motion by appellant for reconsideration of the order denying petition for rehearing be, and the same is, denied.

[14]

(Motion, Notice, Affidavit for Stay of Mandate, Filed January 22, 1971, Omitted in Printing)

[15]

(January 26, 1971)

UNITED STATES OF AMERICA

STATE OF ILLINOIS)
SUPREME COURT) ss.

AT A TERM OF THE SUPREME COURT, begun and held in Springfield, on Monday, the eleventh day of January in the year of our Lord, one thousand nine hundred and seventy-one, within and for the State of Illinois.

Present: ROBERT C. UNDERWOOD, *Chief Justice*
Justice WALTER V. SCHAEFER
Justice DANIEL P. WARD
Justice JOSEPH H. GOLDENHERSH
Justice THOMAS E. KLUCZYNSKI
Justice CHARLES H. DAVIS
Justice HOWARD C. RYAN
WILLIAM J. SCOTT, Attorney General
ROBERT G. MILEY, Marshal
Attest: JUSTIN TAFT, Clerk

BE IT REMEMBERED, that, to-wit: on the 26th day of January, A.D. 1971, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said Court, had and entered of record, to-wit:

JOHN SCHILB, Indv., etc.,
Appellant

No. 42845

vs.

VINCENT P. KUEBEL, as Clerk of the Circuit Court of St. Clair County; et al., etc.,
Appellees.

Appeal from Circuit Court St. Clair County

And now, on this day, the Court having duly considered the motion by appellant for stay of mandate pending filing and disposition of an appeal to the United States Supreme Court, and being now fully advised of and concerning the premises;

IT IS HEREBY ORDERED that the motion by appellant for stay of mandate pending filing and disposition of an appeal to the United States Supreme Court be, and the same is, allowed.

[16]

No. 42845

(Feb. 12, 1971)

IN THE

SUPREME COURT OF ILLINOIS

(Title omitted in Printing)

NOTICE OF APPEAL
TO THE SUPREME COURT
OF THE UNITED STATES

Notice is hereby given that John Schilb, individually and in a representative capacity for and on behalf of each member of a class of persons who have since August 14, 1963 been, or who have hereafter been, (a) named as a defendant in a criminal action in the Circuit Court of St. Clair County, (b) required to file a deposit of bail security, and (c) required after trial, dismissal or acquittal to pay a sum equal to 10% of the bail security deposited, plaintiffs-appellants, hereby appeal to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of Illinois, affirming the decision of the Circuit Court of St. Clair County, Illinois, Twentieth Judicial Circuit, entered in this proceeding on October 7, 1970, and the subsequent denial of the Petition for Rehearing on December 3, 1970.

This appeal is taken pursuant to 28 U.S.C. 1257 (2).

SAM S. PESSIN
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Chicago, Illinois 60602
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Attorneys for Plaintiffs-Appellants.

STATE OF ILLINOIS)
COUNTY OF COOK) ss.

AFFIDAVIT

I, John J. O'Toole, one of the attorneys for the plaintiffs-appellants, and a member of the Bar of the Supreme Court of the United States, hereby certifies that on the 11th day of February, 1971, I served copies of the foregoing Notice of Appeal to the Supreme Court of the United States on the several parties thereto, as follows:

1. Vincent P. Kuebel, etc., et al., defendants-appellees, by mailing a copy in a duly addressed envelope with first class postage prepaid, to the attorney of record, as follows:

To: Robert H. Rice
States Attorney for St. Clair County
Court House Building, Public Square
Belleville, Illinois
Attorney for Defendants-Appellees.

2. Matthew J. Danaher, etc., et al., *Amicus Curiae,* by mailing a copy in a duly addressed envelope with first

class postage prepaid, to their attorney of record, as follows:

To: Edward V. Hanrahan

States Attorney for Cook County
500 Civic Center
Chicago, Illinois 60602

JOHN J. O'TOOLE.

Subscribed and sworn to before me this 11th day of February, 1971.

_____

Notary Public

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UNITED STATES OF AMERICA

STATE OF ILLINOIS)
SUPREME COURT) ss.

I, JUSTIN TAFT, Clerk of the Supreme Court of the State of Illinois, and keeper of the records, files and Seal thereof, do hereby certify the foregoing to be a true copy of the record of this Court in a certain cause entitled:

John Schilb individually and in a representative capacity for and on behalf of each member of a class of persons who have since August 14, 1963 been, or who have hereafter been; (a) named in a criminal proceeding in the Circuit Court of St. Clair County, Illinois, or any Department or Division thereof; (b) required to post a deposit of bail security and was acquitted by the trial court, and; (c) who was required to pay as bail bond costs, 10% of the bail security, said person had deposited, under an act in relation to the deposit of bail security approved August 14, 1963,

Appellant

No. 42845

vs.

Vincent P. Kuebel, as Clerk of the Circuit Court of St. Clair County; Maurice F. Joseph, as County Treasurer of St. Clair County, and County of St. Clair, Illinois,

Appellees.

Appeal from
Circuit Court
St. Clair County
CIV 69-1455

Filed in this office on the 14th day of January A.D. 1970.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the Seal of said court this 17th day of February, 1971.

JUSTIN TAFT, Clerk,
Supreme Court of the State of Illinois.